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Street Vacation Policies as Amended July 2009.

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STREET VACATION POLICIES¹

INTRODUCTION

PURPOSE OF POLICIES

The purpose of these comprehensive, Citywide street vacation policies is to provide consistency, equity, and predictability in determining what action on each vacation petition would best serve and protect the public interest. These policies provide procedural guidance for the City and for petitioners. These policies also express the City's values related to street rights-of-way and street vacations; the default position is that unless there are compelling reasons to vacate, the City will retain the right-of-way for future public purposes. These Policies apply to all rights-of way whether improved or unimproved.

DISTINCTION BETWEEN STREET VACATIONS AND ADMINISTRATIVE LAND USE DECISIONS

There is no right under the land use code or elsewhere to vacate or to develop public right-of-way. In order to do so, a discretionary legislative approval must be obtained from the City Council and, under State law, the Council may not vacate right-of-way unless it determines that to do so is in the public interest. Part of that determination is to assure that potential development and use of the vacated right-of-way would serve the public interest in a significant way. This determination may be guided by established land use policies and standards as called for by these Street Vacation Policies but the Council is not bound by land use policies and codes in making street vacation decisions and may condition or deny vacations as necessary to protect the public interest. The City will generally not support vacations that do not advance City planning goals, particularly if inconsistent with the desired intensity of development and preferred uses.

The City Council has delegated land use decisions to the Department of Planning and Development (DPD). The Council's role in such administrative land use decisions is to set policy in the form of zoning and land use codes, development standards, and environmental policies and regulations which DPD administers. Property owners have the right to develop their property within those established standards, policies, and regulations. Street vacation decisions are City Council decisions as provided by State statute and may not be further delegated.

¹ The term "street" in the context of these policies is used in its broad sense of "dedicated right-of-way." It includes improved and unimproved streets, boulevards, alleys, pedestrian pathways, bikeways, and other public rights-of-way. Although these types of right-of-way serve different transportation and travel functions, all are open to public use.

In addition to the review provided by the street vacation process, a development proposal that includes a proposed vacation is subject to separate land use reviews, including State Environmental Policy Act (SEPA) review. Petitioners are required to obtain all necessary land use and building permits prior to development of the site. Land Use and SEPA reviews may result in conditions in addition to those established in the street vacation review.

SUMMARY OF STREET VACATION POLICIES

In order for a petition for the vacation of public right-of-way to be approved, the City Council must determine that to do so would significantly serve the public interest. Seattle Department of Transportation (SDOT) administers the review process at the request of the City Council and analyzes the impacts of a proposed vacation and the consistency of the proposal with the street vacation policies and other adopted policies and goals. The Street Vacation Process is provided for in SMC 15.62 and RCW 35.79.

SDOT will, as necessary, seek input from a variety of reviewers, including the Seattle Design Commission. The Petitioner should begin working with community organizations in the area where the project is located prior to beginning the formal process with SDOT. At the time of the petition, the Petitioner should provide SDOT with information about its community contacts and how the development will address community concerns, if any. Prior to the formal process to petition the City Council for the vacation, SDOT will make a threshold assessment of the feasibility of a potential vacation whenever possible. As part of this threshold assessment, SDOT will consider the impact of the proposed vacation on street functions and may recommend that the petition not proceed. The City Council may, for certain petitions, consider a vacation at an early stage of the review process in order to provide guidance to the Petitioner or to City staff.

Following the review of a vacation petition, SDOT will make a recommendation to the City Council, including conditions to address the impacts of the proposed vacation and to ensure the provision of the required public benefit. This recommendation will include comments from other reviewing agencies, including the Seattle Design Commission, and may include a recommendation whether to grant or deny the vacation. In making this determination, the City Council and City reviewers will weigh three components of the public interest described as follows:

I. Public Trust Functions: First, the City will consider the impact of the proposed vacation upon the circulation, access, utilities, light, air, open space, and views provided by the right-of-way. These are defined by these policies as the public trust function of the right-of-way and are given primary importance in evaluating vacation proposals. The policies require mitigation of adverse effects

upon these public trust functions. What constitutes adequate mitigation will be determined ultimately by the City Council.

II. Land Use Impacts: Secondly, the City will consider the land use impacts of the proposed vacation. Potential development involving the vacated right-of-way must be consistent with city land use policies for the area in which the right-of-way is located.

III. Public Benefit: Finally, benefits accruing to the public from the vacation of the right-of-way will be considered. The proposal must provide a long-term benefit for the general public.

COSTS AND FEES

The costs and fees associated with a vacation include the petition filling fee, the post-hearing fee, the appraisal fee, and the vacation fee (based on the appraised value of the property). The fees are established by the Seattle Municipal Code (SMC). The review process includes the cost of providing professionally prepared project drawings and plans, maps and plot plans, traffic analysis, possible SEPA review, Design Commission review, and the project may require possible review by a Design Review Board or other special review. The Petitioner is responsible for preparing and providing information necessary to respond to City questions or concerns. Additional costs may include required mitigation measures and the costs associated with the provision of the public benefit.

Petitioners are given the option of filing for both the vacation petition and the Master Use Permit (MUP) simultaneously. To protect the integrity of the legislative street vacation review process, a notarized statement must be signed by the petitioner and included in the petition for the proposed vacation. The statement should indicate that the petitioner has been informed the vacation petition may be subsequently denied at the City Council's discretion; and that any financial commitment the petitioner has made prior to vacation approval is at his or her own risk and will not be a factor in the Council's decision upon the proposed street vacation.

FRAMEWORK POLICY – PUBLIC INTEREST

Vacation requests may be approved only when they are clearly in the public interest. Rights-of-way will be retained unless it can be shown that they are not required for a current or foreseeable public use.

A. Components of Public Interest

The public interest with respect to street vacations has three major components, all of which must be present for any vacation, partial or complete, to occur. These components are:

- 1) Protection of the public trust: defined as providing for circulation, access, utilities, light, air, open space and views;
- 2) Provision of public benefit: defined as providing a long-term benefit for the general public; and
- 3) Protection from adverse land use effects: defined as assuring that the project developed is consistent with City policies.

B. Determination of Public Interest

The City Council will weigh the public trust and land use effects of a vacation, mitigating measures, and the public benefit provided by the vacation to determine whether or not the vacation is in the public interest. In balancing these elements of the public interest, the Council will place primary importance upon protecting the public trust it holds in public right-of-way.

Rights-of-way are dedicated in perpetuity for use by the residents of Seattle and others for purposes of public travel and transportation of goods. The dedication carries with it certain public rights to circulation, access, utilities, light, air, open space, and view. City government acts as the public's trustee in administering streets and alleys. In that endeavor the primary concern of the City in vacation decisions is to safeguard the public's present and future needs and to act in the public's best interest.

I PUBLIC TRUST POLICIES

POLICY 1 – CIRCULATION AND ACCESS

Vacations may be approved only if they do not result in negative effects on both the current and future needs for the City's vehicular, bicycle, or pedestrian circulation systems or on access to private property, unless the negative effects can be mitigated.

Rights-of-way provide public transportation routes and access to abutting properties.

Guideline 1.1 Protection of Circulation and Access According to Street Classification.

The following guidelines are organized by street classification consistent with the Transportation Strategic Plan (TSP)

A. Arterials.

Streets designated as Arterials may be vacated only when an alternative circulation route is substituted.

B. Access Streets: Residential and Commercial.

Petitions for the vacation of streets designated as Access Streets may be approved only if:

1. Access is retained to properties on the block where the right-of-way is located;
2. Circulation to properties on neighboring streets is retained;
3. The right-of-way does not provide a necessary link in the continuity of a route to arterials;
4. Public parking provided by the right-of-way is not needed, can be provided on nearby rights-of-way, or can be replaced; and
5. Vacations that would result in diverting truck or commercial traffic to nearby residential streets will not be approved.

C. Transit Routes.

Streets that contribute to the integrity and continuity of the public transit system will be considered for vacation only after review and comment by relevant public transportation agencies.

D. Truck Routes and Truck Streets (Arterials).

Designated major truck streets may be vacated only when an alternative route is substituted.

E. Boulevards.

Designated boulevards and portions of boulevards may be vacated only for public purposes such as parks.

F. Alleys.

Proposed alley vacations will be considered according to the following guidelines.

1. The primary purpose of alleys is to provide access to individual properties for loading functions and to provide utility corridors and access to off-street public services such as water, sewer, solid waste and electricity. In addition, alleys may provide other public purposes and benefits including pedestrian and bicycle connections, and commercial and public uses. Alleys should be retained for their primary purposes and other public purposes and benefits. Alley vacations may be approved only when they would not interrupt an established pattern in a vicinity, such as continuity of an alley through a number of blocks or a grid, which is a consistent feature of neighborhood scale. The impacts on future service provision to adjacent properties if utilities are displaced will be reviewed.

2. Residential Zones.

In general, alleys in residential zones will be preserved.

Alley vacations associated with institutions (as defined in the Land Use Code) may be permitted only when:

- a) steep topography prevents development and use of an unimproved alley for access; or
- b) the alley is not needed for service functions; and
- c) off-street parking access which meets the land use code requirements can be provided otherwise.

3. Commercial Zones.

In general, alleys in commercial zones will be preserved. Such alleys may be considered for vacation only when:

- a) their loading, service, delivery, and access to parking functions are retained on the petitioner's property; and
- b) the number of curb cuts along commercial frontage is not likely to be increased as a result of the proposed vacation.

4. Downtown.

The following criteria will be considered for specific downtown alley vacation petitions:

- a) may be vacated only when their loading, service and access functions can be continued within the development site, and curbcuts are provided in conformance with the Comprehensive Plan and the land use code;
- b) alleys which are part of the primary pedestrian circulation system, such as Post Alley, may be vacated only when comparable public pedestrian circulation is provided and the pedestrian environment along the corridor is improved; and
- c) to ensure compatible scale and character of infill development, for example, alleys in special review districts or historic districts may be vacated only when compatible scale and character of development is assured.

G. Bicycle Routes.

The continuity and integrity of designated bicycle routes, such as bicycle streets, bicycle paths, and bicycle lanes will be protected. Such rights-of-way may be vacated only when a comparable or better bicycle right-of-way is provided as part of the vacation. Bicycle access must be comparable in terms of safety, convenience, and directness.

H. Pedestrian Access.

- 1. Pedestrian routes including designated green streets, and public stairways may be vacated only for public purposes, such as parks.
- 2. Proposed vacations, which would result in a reduction of the sidewalk width in areas of existing or anticipated heavy pedestrian volume may be vacated only when provisions are made to otherwise accommodate the pedestrian traffic.
- 3. Proposed vacation of rights-of-way, which contain unimproved pedestrian trails, may be approved only when the public pedestrian function is protected.

I. Unimproved Streets and Alleys.

Existing and potential uses for unimproved rights-of-way will be identified during the review process. These uses include development of vehicular circulation and access, pedestrian uses such as pedestrian access to schools, public facilities, shorelines, open space uses, bicycle use and access to public spaces or parks or adjacent streets. All or a portion of the right-of-way may be retained for these or other purposes.

Guideline 1.2 Traffic Code Compliance

Proposed vacations, which would encourage violation of the traffic code will not be approved. An example is a vacation eliminating one exit to an alley, requiring vehicles to back from the alley on to a street.

Guideline 1.3 Cumulative Effects to be Assessed

When several vacations are proposed for a particular area of the City, such as within the boundaries of a major institution, a comprehensive review will be undertaken to determine the cumulative effects of the vacations on circulation and access.

Guideline 1.4 Necessary On-Street Parking Must be Replaced

Streets which provide necessary on-street parking may be vacated only when the public parking can be otherwise provided.

Guideline 1.5 Circulation/Access Conditions on Vacations

The City Council may impose conditions on vacations to mitigate negative effects of the vacation on vehicular, pedestrian, and bicycle travel.

Guideline 1.6 Vehicular and Pedestrian Access by Agreements with Property Owners

A. Vehicular Access

Vehicular traffic functions will not be provided by agreement across private property. When the traffic functions of a street are necessary to the operation of the circulation system, the street will be retained as a dedicated right-of-way.

B. Pedestrian Access

Pedestrian circulation functions may be provided by an agreement which provides for public access across private property only when a major public benefit is provided by such an arrangement.

POLICY 2 – UTILITIES

Rights-of-way which contain or are needed for future utility lines or facilities may be vacated only when the utility can be adequately protected with an easement, relocation, fee ownership or similar agreement satisfactory to the utility owner.

Public rights-of-way provide utilities with corridors for the efficient transportation and delivery of utility services to the public in the least costly manner possible. Utilities generally assess vacation petitions from an operational perspective in order to ensure that a vacation will not impair current service reliability and capacity levels nor limit the ability to expand services in the future. The growth of telecom utilities above and below ground, increased urban densities, and demand for undergrounding of utility facilities all place pressure on the value of public rights-of-way, particularly alleys, for future utility needs.

Guideline 2.1 Review of Petitions by Affected Utilities

Utilities will be given an opportunity to review the proposed vacation, to identify its existing and future interests in the right-of-way and to indicate what actions would be necessary to protect its interests. The Petitioner is responsible for working with the various utilities to identify and address the utility issues. The Petitioner bears the costs of addressing the utility issues relating to the vacation and shall ensure that the utility is in a similar position as prior to the vacation without a detriment to current or future utility services. Enhancement of utility services at the Petitioner's expense shall not be required.

Guideline 2.2 Utility Conditions on Vacations

The City Council may impose conditions on vacations to assure continued service to the public in the most efficient, least costly manner possible.

Guideline 2.3 Utility Easement Provisions/Property Owners Risk and Responsibility

- A. Easement agreements should clearly state the rights and responsibilities of each party.
- B. Utilities may prohibit construction of buildings, structures, grading and filling, and other uses over or under their easements where such activities would inhibit operation of or prevent access to the utility

facilities for maintenance and repair, or would cause extra cost or liability to the utility, or would affect the safety and integrity of those facilities.

- C. Any costs for the repair of damages to the improvements placed on or over the utility easement by the property owner due to the utility maintenance repair or installation will be the express responsibility of the property owner.

POLICY 3 – LIGHT, AIR, OPEN SPACE, AND VIEW

When the City Council determines that the light, air, open space or view provided by a particular street or alley should be retained, the right-of-way may be vacated only if the public open space, light, air and view can be retained or substituted by dedication to the public of other comparable street right-of-way or other property such as open space property or on future development on the vacated and abutting property.

The light, air open space, and view opportunities provided by rights-of-way are important resources that contribute to the quality of life in Seattle and become more valuable as the City becomes more densely developed. The contribution of this important street function to the existing and future quality of life for Seattle residents will be an important consideration in each proposed vacation.

Guideline 3.1 Impacts on Light, Air, Open Space, and View to be Analyzed

The light, air, open space and view functions provided by the right-of-way will be identified for each proposed vacation and the effects of their loss analyzed. The analysis will include the potential shadow impacts, of the increase in development potential directly attributable to the vacation, on nearby public parks and open spaces. Any potential impacts of vacation on light, air, open space or view will be compared with similar impacts that would result from development without the vacation. Means of retaining these functions may be considered.

Guideline 3.2 Comprehensive Plan Policies to be Followed

Proposed vacations may be approved only when they are consistent with the City's Comprehensive Plan. Particular consideration will be given to whether the project supports the desired density and preferred uses identified in the Comprehensive Plan, as the development of a residential project in an area targeted for housing growth.

Guideline 3.3 Open Space Considerations

The analysis of the open space functions of streets and alleys will consider the impact of vacation upon:

- A. The access to sun, light, and air circulation provided to pedestrians, bicyclists, vehicle occupants, and abutting properties;
- B. The lot size, block configuration, and streetscape pattern of neighborhoods and land use zones defined by street and alley rights-of-way;
- C. Boundary definition. Providing a buffer between incompatible land uses within a land use zone or between different land use zones;
- D. The potential contribution of rights-of-way to open space areas. Limiting the impact of development associated with street vacations on open space, and pedestrian access and amenities;
- E. When undeveloped rights-of-way are identified for open space in the Comprehensive Plan, these streets shall not be vacated to facilitate development that is inconsistent with the intent of the plan;
- F. A neighborhood play area or area of neighborhood focus;
- G. Green Streets. As part of an adopted comprehensive neighborhood or subarea plan, rights-of-way may be identified for development as green streets in order to promote a pedestrian environment and strengthen the residential quality of an area;
- H. Open Space Network. Existing/proposed urban trails or other rights-of-way connecting parks and open spaces or connecting the community with parks, schools, shorelines, or other public facilities, shall not be vacated unless the right-of-way is exchanged for other land which would provide better pedestrian or bicycle pathways as part of development of the site;
- I. Urban Trails and Boulevards. Public street rights-of-way along urban trails, as identified on the 1991 Urban Trail Policy Maps, protected view rights-of-way, and boulevards shall generally be retained unless the vacation will result in an improvement of the open space function provided by the right-of-way. Such decision shall be considered in context of the Comprehensive Plan.
- J. Prevention of shadows on parks or other public open spaces. Vacations generally shall not be approved if the development proposed as part of the vacation request would result in additional shadowing of parks and other public open spaces.

Guideline 3.4 Boulevards to be Retained

Because of the open space they provide, designated boulevards and portions of boulevards may be vacated only for public purposes such as parks or open space preservation.

Guideline 3.5 View Considerations

- A. Potential view impacts resulting from a vacation will be identified and compared with a "no vacation" alternative to determine whether the vacation would negatively affect views. The quality of the view will be considered in the evaluation of each proposal for street or alley vacation.
- B. Protected view rights-of-way identified by the Land Use Codes and Maps and SEPA policies shall not be vacated for development that would obstruct public views from these rights-of-way.
- C. Street rights-of-way in downtown that provide views to Elliott Bay, West Seattle, Mount Rainier, the Olympic Mountains, and other significant features may be designated as view corridors on the Downtown View Corridor Map (Exhibit 3.5 C Downtown View Corridor Map). Downtown streets shall not be vacated except when conditions are placed on the vacation to ensure the preservation of public views from designated view corridors. Streets designated as view corridors shall not be vacated for development overhead to ensure that these street rights-of-way remain open to the sky.
- D. For streets not identified as protected view rights-of-way, the determination of what views are worthy of protection will be at the discretion of the City Council. Views worthy of protection include, but are not limited to views:
 - 1. from:
 - a. public rights-of-way or public places such as parks or designated scenic routes.
 - b. a substantial number of residences; or
 - c. properties abutting the right-of-way; and
 - 2. of:
 - a. important natural features, such as mountains, water and greenery; or

- b. designated landmarks and points of cultural and/or civic interest, including the city skyline.

Guideline 3.6 Light, Air, Open Space, and View Conditions on Vacations

The City Council may impose conditions on vacations to mitigate any potential negative effects of the vacation on the light, air, open space, or view functions of the right-of-way.

Guideline 3.7 Partial Vacations

- A. Vacation of the undeveloped portion of the street right-of-way shall generally be discouraged to:

- 1. Retain the existing pattern of extra setbacks and open space in residential neighborhoods.
- 2. Provide opportunity for pedestrian and bicycle amenities in neighborhood commercial areas.
- 3. Provide areas of natural scenery along designated protected view rights-of-way and boulevards.
- 4. Provide a buffer between land uses and zoning districts.
- 5. Provide continuity of wildlife habitat corridors.

- B. Subsurface Vacations

Subsurface vacations may be approved only when protection against future impairment of the surface right-of-way and utility functions is provided and the City is adequately protected from potential liability resulting from failure of the surface due to problems with the underlying structure.

- C. Aerial vacations will be considered in only the most limited of circumstances. The aerial portions of rights-of-way are an important resource providing light, air, and open space, and these aerial portions are an important element of the street grid, provides consistency in the development pattern. Aerial vacations for structures will be considered only as follows:

- 1. For the development or expansion of public facilities, public institutions or non-profit institutions. The Petitioner must demonstrate

in a written alternatives analysis, to the satisfaction of the City Council, that no feasible development alternative exists; and

2. That a permit for a skybridge cannot adequately meet the needs of the petitioner.

The review of the petition shall include specific review of the impacts of the proposed aerial structure including addressing such items as the design of the structure and its dimensions, transparency, material quality, the scale of the project including the aerial portion, and the impact on the streetscape below the structure. The Petitioner shall also include mitigation specific to the urban design impacts of the aerial structure.

Guideline 3.8 Protection of Environmentally Critical Areas

- A. Rights-of-way in slide prone areas, wetlands, flood plains or other critical areas shall generally be retained to reduce development intensity in environmentally critical areas and to protect public health, safety, and welfare.

Guideline 3.9 Trade or Exchange of Property

The review of any vacation may consider the opportunity for exchange of property. Any proposed property exchange must identify property that the City is willing to accept. The Petitioner shall be responsible for providing, as needed, Title Insurance, Environmental Site Assessment or environmental clean-up, deeds in a form acceptable to the City, filing fees, and additionally, the Petitioner shall be responsible for any taxes resulting from the transfer. Exchanges may be considered when the property:

1. would be useful to mitigate or enhance the various aspects identified in the property proposed to be vacated, such as exchanging an alley vacation for a wider street;
2. would exchange property identified as open space for property which would create a contiguous open space parcel; or
3. would shift development from property identified as open space to a property with less environmental impacts.

Guideline 3.10 Alternative to Vacation

The Council, when reviewing the petitioner's indicated use of the property, may consider the practicality of issuance of street use permits to provide for temporary uses. In circumstances where a street use permit can accommodate

the uses indicated by the Petitioner, a permit is preferred and a vacation would generally not be granted. A street use permit as an alternative to a street vacation may be issued under the following conditions:

1. the private use of undeveloped public rights-of-way does not hinder the achievement of any identified open space objectives;
2. private landscaping or gardening of undeveloped streets may be allowed with a street use permit, provided that public pedestrian ways and access to shorelines areas are retained;
3. street corridor views are not obstructed.

II LAND USE POLICY

POLICY 4 – LAND USE

A proposed vacation may be approved only when the increase in development potential that is attributable to the vacation would be consistent with the land use policies adopted by the City Council. The criteria considered for making individual vacation decisions will vary with the land use policies and regulations for the area in which the right-of-way is located. The City Council may place conditions on a vacation to mitigate negative land use effects.

Vacations can affect the land use and development patterns in an area by adding to the developable land base, altering the local pattern of land division, and increasing the development potential on the vacated and abutting properties. These changes may allow development that is inconsistent with adopted land use policies and have a negative effect on the area of the proposed vacation and other rights-of-way. The Petitioner shall provide the City with information about the expected completed density of the project and the development potential of the property without a vacation. Such information should be provided as both the percentage increase in the development potential and the additional square footage added to the project. The Petitioner shall also provide the City with information as to how the project advances City planning goals and meets the zoning criteria in the area where the project is located. It is the obligation of the Petitioner to provide a justification for the vacation and to provide information on whether there are feasible alternatives that do not require a vacation.

Guideline 4.1 Land Use Considerations

To determine whether the land use effects of vacation are in the public interest, the following factors will be considered:

- A. A. The long- and short-term effects of the changes in development potential directly attributable to the vacation on the circulation, access,

utility, light, air, open space and view functions of nearby streets and nearby public places;

- B Consistency of land use changes with the City's Comprehensive Plan, particularly in the land use, urban village, transportation and neighborhood elements of the plan;
- C. In commercial and residential zones, the compatibility of the size, scale and character of potential development with the size, scale and character of both existing development in the area and development provided for by the zoning code, given typical lot sizes and configurations; and
- D. The post-vacation lot size and configuration compared with surrounding properties and with the local pattern of land division and organization. In areas where street rights-of-way provide a strong edge or boundary between zones or areas of different scale and character, the right-of-way may be vacated only when a suitable alternative can be achieved with the proposed vacation. Vacations which would result in intrusions of residential development into commercial and industrial zones or the converse will be discouraged.

Guideline 4.2 Land Use Information

To evaluate the land use effects of a vacation, the following types of information will be considered:

- A. The long-term use effects attributable to the vacation will be determined by comparing pre- and post-vacation maximum development possible under the land use code. For downtown, commercial, and multi-family land use zones the information provided should include conceptual plan and elevation drawings. These drawings will illustrate maximum possible building footprint and envelope before and after vacation and its relation to the surrounding neighborhood. They will also show allowable height, bulk, setbacks, square footage, bonus assumptions and permitted uses.
- B. Project-specific development plans will be required of petitioners. Project-specific information will be used to look at the shorter-term effects of the vacation, to evaluate the public benefit provided by the vacation and/or to establish land use conditions on the vacation.
- C. If there is an EIS for a proposed project involving a vacation, the EIS should address the traffic, land use, and other effects of the vacation, using the street vacation policies as a guide. The EIS should also include a "no vacation" alternative. The proposed project involving a

vacation will be considered by the City Council only after the final EIS has been published.

- D. If an EIS is not required, the Petitioner shall provide a traffic analysis, a completed Environmental check list and any other information as requested by the City. The project will not be forwarded for City Council review until all requested information has been provided and reviewed by City staff.
- E. For downtown, commercial and multi-family land use zones, project specific information, when provided, should include schematic building footprint and elevation drawings that illustrate height and build, uses, square footage, amount of parking, access points and bonus details. Additional information may be requested, as the situation demands.

Guideline 4.3 Land Use Conditions on Vacations

The City may place conditions on vacations to guard against the negative land use effects of additional development potential attributable to the vacation and to make sure that policy objectives are met.

- A. Such conditions will be related to the identified negative effects attributable to the vacation. For example, they may limit additional height or density to pre-vacation levels when these increases are not in the public interest. The conditions will ensure that post-vacation development is consistent with the city's land use policies and otherwise in the public interest.
- B. Land use conditions will be stated in terms of development parameters, such as floor area maximums or building envelopes which may not be surpassed, and will generally run with the land. The conditions will be administered by DPD through the master use permit process in conjunction with development of the vacation site.
- C. Land use conditions imposed on a vacation do not preclude related project conditions being imposed under the State Environmental Policy Act (SEPA). In some cases, environmental review of a proposed project may reveal the need for SEPA conditioning that reduces the upper limits placed on the vacation.
- D. Land use conditions imposed upon approval of a vacation, in the addition to the Land Use Code, SEPA regulations, the Building Code and other City codes, will be relied on to regulate post-vacation development.

- E. Approval of a street or alley vacation shall not imply City approval of the development project for the site and shall not relieve the petitioner of the requirement to obtain all necessary land use and building permits prior to development of the site.

Guideline 4.4 Timing of Vacations in Conjunction with Master Use Permits (Administrative Land Use Decisions)²

- A. Developers/Petitioners are required to file for a vacation prior to or at the same time as filing a Master Use Permit application. The vacation review and the Master Use Permit review may occur simultaneously and will be coordinated by City staff. The Department of Planning and Development (DPD) may not publish the decision for a Master Use Permit until the City Council has approved the vacation petition. Council approval of a vacation petition does not constitute approval of a Master Use Permit. For any project for which both a Master Use Permit and a street vacation are required, DPD may not issue a permanent certificate of occupancy until the Seattle Department of Transportation has stated its conclusion in writing that any conditions imposed as part of the approval of the vacation petition have been met satisfactorily.
- B. Any investment made in a project prior to vacation is solely at the Petitioner's discretion and risk. The Petitioner must not assume that the right-of-way is available for development until the City Council has approved the vacation.
- C. When a vacation is proposed for a development project, the developer may file a master use permit application concurrently with a vacation petition. The master use permit may not be filed prior to the vacation petition. If the vacation petition is found to be invalid, review of both the vacation and land use applications will be placed on hold until a valid petition is received.
- D. Petitioners who choose to have vacation-related development projects under master use permit review prior to vacation approval must sign a notarized statement to be placed in the Comptroller's file for the vacation. The statement shall include: that the Petitioner has been informed that investment in the project prior to vacation approval is at the Petitioner's sole risk; and will not be a consideration in the vacation decision, that the Council's decision will be based on serving the public interest; which will include project-specific land use considerations; that the legislative vacation decision is separate from and subject to different criteria than the administrative land use decision; and that Council's action

² Administrative Land Use decisions are described in Seattle Municipal Code 23.76.

on the vacation does not exempt the petitioner from adhering to the requirements of the City's Land Use Code. The notarized statement shall include, but is not limited to, the items listed above.

- E. Approval of a vacation shall be based on all the criteria established in these Policies. A vacation will not be finalized until assurances are provided that the project will be constructed and/or that the City will recover the right-of-way if the project is not constructed. The final vacation legislation will not be passed until such time as all conditions have been fully satisfied. For phased projects or other unusual circumstances the City may consider other accountability mechanisms. Several means, such as a rededication provision in which a rededication deed is held in escrow pending completion of construction, or other means suitable to the situation could accomplish this.
- F. Conditional approval of a vacation petition shall be considered valid for five-years from the date of City Council conditional approval (see Policy 6, page 31, for Council process and list of conditions that must be assured prior to the passage of the final street vacation ordinance). The Petitioner shall be expected to meet all of the conditions imposed on the vacation, to the satisfaction of the City, within the five-year time frame. Once the vacation has been conditionally approved by the City Council, the Petitioner shall provide SDOT quarterly updates providing specific information about the progress of the development and satisfaction of the conditions. At the time of conditional approval, the Council may provide for a longer period of time for large scale or phased projects where a five-year time frame may not be adequate.

The vacation approval shall expire at the end of the five-year time frame and the petition shall be closed. The Petitioner shall be determined to have satisfied the five-year time frame when the Petitioner has provided to the City: all required documentation; evidence that demonstrates that all conditions have been satisfied; all fees have been paid, and the City has determined that the documentation and satisfaction of the conditions are acceptable. The City process to approve the final legislation may occur beyond the five-year time frame. Any extension of time must be requested in writing and shall require review by the City Council. The City Council may grant or deny an extension of time based on its review of the reason for the requested extension and may impose additional conditions where necessary to protect the public interest.

Guideline 4.5 Timing of Vacations in Conjunction with Council Land Use Decisions³

- A. When a vacation and Council land use approval are proposed for a development project, the developer may file a land use application concurrently with a vacation petition. Applications for Council land use decisions may not be filed prior to any vacation petitions which are indispensable elements of the land use proposal. For instance, a contract rezone or Council conditional use proposal for a project involving public right-of-way could not be filed without the associated vacation petition. Proposals such as major institution master plans may be filed prior to associated vacation petitions only if the development involving the vacation is not imminent and the vacations are not necessary to the land use proposal. If a required vacation petition is found to be invalid a review of both the vacation and the land use applications will be placed on hold until a valid petition is received. The vacation decision and the land use decision will be coordinated and may be considered simultaneously by the Council if the vacation decision is an indispensable element of the land use decision.
- B. The review of a vacation proposal by SDOT staff and the land use review of the proposal by DPD staff will take place separately but will be coordinated and a schedule for Council review will be established by the City Council. The vacation and land use decisions may be made in joint Transportation and Land Use committee sessions or in separate sessions, or by a special Committee or a Committee of the Whole as determined by the Council.

Guideline 4.6 Zone Specific Review

Adopted City Land Use Policies to be Used

In addition to the general street vacation policies and guidelines contained in this document, the adopted City land use policies for the zone in which a vacation is located, will be used to determine whether or not the land use effects of each vacation are in the public interest. These include policies such as the Comprehensive Plan, particularly its land use, urban village, transportation and neighborhood elements. Vacations will be reviewed according to Land Use Policies as now constituted or hereafter amended.

³ Council Land Use decisions are described in SMC 23.76.04.

Area Specific Guidelines

Guidelines related to various land use areas are stated below. They are provided in order to highlight special concerns related to each area. They shall be used to supplement the general provisions and guidelines of the Seattle Vacation Policies and other land use policies for protection of the public interest.

A. Downtown

Petitions for vacations of right-of-way in the downtown area shall be reviewed according to the Comprehensive Plan, particularly its land use, urban village, transportation and neighborhood elements of the plan and other relevant adopted plans or goals.

B. Single-family Areas

Rights-of-way in single-family areas shall generally be retained as these areas may be needed in the future to provide for public uses, such as utility corridors, that cannot be currently identified or anticipated. Rights-of-way in single-family areas provide a number of public benefits such as providing for consistency in the pattern and scale of development and providing important breathing space in a neighborhood. Petitions for vacations in single-family areas shall be reviewed by the same criteria as applied to other vacation petitions, including the requirement that the vacation provide a long-term benefit to the general public.

Cluster housing and other planned housing developments or innovative housing initiatives proposed in Single-Family zoned areas shall be evaluated by the criteria established for the review of Multi-family areas. Alley vacations associated with existing institutions in single family areas, as provided by the SMC, will be reviewed for compatibility with the surrounding neighborhood.

C. Multi-family Areas

Petitions for the vacation of right-of-way in multi-family areas shall be reviewed according to the provisions of the Comprehensive Plan, particularly its land use, urban village, transportation and neighborhood elements or other relevant policies.

In addition, petitions will be reviewed for potential impact upon neighborhood traffic volumes and noise.

D. Commercial Areas

In general, streets and alleys in commercial areas will be preserved in order to aid in the movement of goods and people, unless it can be demonstrated that the vacation meets another important public purpose without jeopardizing the functioning of the commercial area and its compatibility with surrounding areas. Such petitions shall be reviewed according to the provisions of the Comprehensive Plan, particularly its land use, urban village, and transportation elements.

Access to off-street loading and parking areas and the continuity of street fronts, particularly in areas with pedestrian activity, will be preserved.

E. Industrial Areas

Petitions for vacations of right-of-way in industrial areas will be reviewed according to the Comprehensive Plan and any other relevant adopted plans or goals for industrial areas.

F. Major Institutions

1. For proposed vacations within major institution boundaries, the major institutions policy guidelines and objectives (SMC 23.16.010) will be used to evaluate the land use effects of the vacation.
2. If a master plan has been adopted, the vacation decision will give substantial weight to the provisions of the individual master plan. Land use, transportation and traffic information contained in the EIS for the master plan will be considered. This information will be updated prior to the vacation decision if conditions in the area have changed or if several years have passed since adoption of the master plan. Identification of intended street vacations in an adopted major institution master plan shall not constitute prior approval of the vacations.
3. If, at the time a vacation petition is considered by the City Council, a master plan involving the vacation right-of-way has been submitted for approval, but not yet approved, the Council's review of the proposed master plan and vacation request shall be conducted concurrently according to Guideline 4.5 of these policies. Major institutions will be encouraged to submit petitions for any vacations called for in

a proposed master plan at the same time as the master plan is proposed.

Final vacation ordinances will not be passed until construction of improvements on the right-of-way, called for by the master plan, are assured according to Guideline 4.5-3, p. 15 of these policies.

G. Shoreline Overlay District

1. Vacation of Rights-of-way Abutting Bodies of Water (Waterfront):
 - a. The vacation of a street or alley or portion of a street or alley that abuts a body of water is regulated by Revised Code of Washington (RCW) 35.79.035 and Seattle Municipal Code (SMC) 15.62.080. Consistent with the Comprehensive Plan and the Shoreline Master Program, and other applicable policies or codes, the City will consider the vacation of rights-of-way that abut on a body of salt or fresh water only if:
 - i. the vacation is sought to enable the City to acquire the property for beach or water access purposes, boat moorage or launching sites, park purposes (including open space preservation), public view, recreational purposes, water-dependent or water-related educational or interpretive purposes, or other water-dependent or water-related public uses, or the vacation is sought to enable the Port of Seattle to acquire the property for water-dependent or water-related port purposes; or
 - ii. The right-of-way is industrially zoned, and the area to be vacated will be used only for a water-dependent or water-related industrial use, and the vacation will enable the City to implement a plan, adopted by resolution or ordinance, that provides comparable or improved public access to the same shoreline area to which the street or alley sought to be vacated abuts, had the properties included in the plan not been vacated, and the vacated area shall be maintained in perpetuity for a water-dependent or water-related industrial use, and any changes in use will require Council review and action, with the possibility of dedication to public access in the event that the industrial use is discontinued or significantly changed.

2. Use in the Shoreline District

Compatibility between use of vacated right-of-way in the Shoreline District and the Seattle Shoreline Master Program (SSMP) will be ensured by use restrictions established by the SSMP and underlying zoning.

3. Development in the Shoreline District

In assessing the impact of increased development potential which would result from a vacation in the Shoreline District, consideration shall be given to the area objectives, purposes of each "environment" designation and the development standards established in the SSMP and underlying zoning. The effect of land consolidation on the usual pattern or view corridors and lot coverage will be considered. Consideration shall also be given to the public interest in drainage and related functions of the shoreline area, and protection of abutting waters from pollution, excessive flows or other conditions which would degrade the abutting water.

4. Public Access in the Shoreline District

- a. The option of leasing street ends, as permitted in RCW 35.23.410, shall be explored as an alternative to vacation, in order to preserve future public access opportunities.
- b. Vacations of public right-of-way abutting any body of water may be approved only when comparable or improved public access is provided.
- c. The vacation of street ends and the provision of comparable or improved public access along the Duwamish River will be governed by the Public Access Policy Plan for the Duwamish Waterway Resolution 27127.
- d. Comparable public access for vacations in areas not covered by the Duwamish Public Access Policy Plan shall be provided consistent with those policies and guidelines of the Duwamish Access Plan which are generally applicable, until such time as a similar plan is developed for other areas.
- e. Right-of-way which provides a portion of the regulated public access required by the SSMP for another site may be vacated or utilized to provide public access for a new development, only when comparable public access is

provided for both the proposed vacation and the existing access point. Public access provided under the requirements of the SSMP and these vacation policies may be coordinated as provided by the Duwamish Access Policy Plan, Policy 4, p.15.

- f. Right-of-way which is needed for vehicular access to the water may be vacated only when comparable access can be provided otherwise.
- g. Rights-of-way not Abutting a Body of Water (Upland).

If Upland right-of-way is needed for public access to waterfront right-of-way, or other public access to the water, it may be vacated only when comparable public access is provided.

III. PUBLIC BENEFIT POLICY

POLICY 5 – PUBLIC BENEFIT

- A. A vacation petition shall include a public benefit proposal. The concept of providing a public benefit is derived from the nature of street right-of-way. Right-of-way is dedicated for use by the general public in perpetuity whether or not a public purpose can be currently identified. The City acts as a trustee for the public in its administration of rights-of-way. Case law requires that in each vacation there must be an element of public use or benefit, and a vacation cannot be granted solely for a private use or benefit. Therefore, before this public asset can be vacated to a private party, there must be a benefit that accrues to the general public.

Rights-of-way, whether improved or unimproved, provide important benefits to the general public. Among the various benefits are the preservation of the street grid that provides for consistency in the development pattern and influences the scale and orientation of buildings. Rights-of-way provide for breathing space, open space and views, natural drainage, and wildlife corridors. These benefits are in addition to the public functions provided by rights-of-way discussed in earlier sections of these Policies, including the movement of people and goods whether in vehicles, on foot or by bicycle; providing for current and future utility services; and street trees and other amenities.

- B. Proposed vacations may be approved only when they provide a long-term public benefit. Vacations will not be approved to achieve

short-term public benefits or for the sole benefit of individuals. The following do not constitute a public benefit:

- Mitigation of the adverse effects of a vacation.
- Meeting code requirements for development.
- Paying the required vacation fee.
- Facilitating economic activity.
- Providing a public, governmental or educational service; while the nature of the project is a factor in determining the adequacy of a public benefit proposal, it does not in and of itself constitute an adequate public benefit.

- C. The public benefit must exceed elements required by the SMC or mitigation required by SEPA or other regulations and is in addition to the fees and other obligations. The Petitioner's public benefit proposal should recognize the loss of the benefits provided by the right-of-way to the public and the gains achieved by the vacation to the petitioner. The public benefit should balance what the public loses through the vacation with what the public will gain from the project. The comparison is intended to be an element of the evaluation of the adequacy of a public benefit proposal. The public benefit should not merely be compensatory and should clearly provide a benefit to the general public.

The proposal to provide a public benefit does not entitle a Petitioner to a vacation; the decision whether to grant a vacation is based on a review of all the elements identified in these Policies.

- D. It is the obligation of the Petitioner to demonstrate that the public benefit proposed be proportional to the benefits gained by the Petitioner and to the scale and impacts of the project. The Petitioner shall provide information regarding the increase in the development potential from the vacation and the assessed value of the adjacent property. In addition, the Petitioner shall provide objective information about the public benefit proposal such as budget information, dimensions or other factual information. A significant public benefit must be provided by major projects, that is those that are large in scale, require a large amount of public right-of-way, have identified impacts or those where the vacation contributes to a significant increase in the scale of the project. Minor projects are only required to provide a more moderate public benefit.

As part of the petition process, the Petitioner shall provide information to the City regarding the public benefit proposal. The City will assist the Petitioner in refining and developing the public

benefit proposal. The City Council shall make the final determination as to whether the public benefit is acceptable to the City.

E. A number of factors will be considered, including:

- Zoning designation, i.e. commercial, industrial, residential;
- Street classification, i.e. arterial, alley, residential;
- Assessed value of adjacent property;
- Lease rates in the general vicinity for similar projects;
- Size of project, in square feet;
- Size of area to be vacated, in square feet; and
- Contribution of vacated area to the development potential of the site: percentage increase of the project and additional square feet.

F. The City will also consider:

- Compliance of the project with City policies and goals, including the Comprehensive Plan, neighborhood planning goals, and economic development goals;
- Provision of affordable or special need housing or other human services;
- Public nature of the project (library, governmental purposes, low-income housing);
- Neighborhood support or opposition;
- Broad-based community support or opposition;
- Protection of designated landmarks and other historic/community resources; and
- Protection of environmentally sensitive lands.

Guideline 5.1 Public Benefits Identified

Public benefits may include, but are not limited to:

A. On-site Public Benefits: on-site benefits are favored as the provision of the public benefit can also act to offset any increase in scale from the development. On-site public benefits may include:

- Publicly accessible plazas or other green spaces, including public stairways;
- Streetscape enhancements beyond that required by codes such as widened sidewalks, additional street trees or landscaping, street furniture, pedestrian lighting, wayfinding, art, or fountains;
- Pedestrian or bicycle trails;

- Enhancement of the pedestrian or bicycle environment;
 - View easement or corridors; or
 - Preservation of landmark buildings or other community resources.
- B. Off-site Public Benefits: where it is not practicable to provide the public benefit or more than a portion of the public benefit on the development site, the public benefit may be provided off-site. This may include:
- Pedestrian or bicycle trails or public stairways;
 - Enhancement of the pedestrian or bicycle environment;
 - Enhancement of existing public open space such as providing playground equipment in a City park;
 - Improvements to designated Green Streets;
 - Funding an element from an adopted Neighborhood Plan;
 - Providing wayfinding signage; or
 - Providing public art.
- C. Real Property May Be Conveyed: in certain circumstances the City may accept real property as a public benefit. The property proposed to be conveyed must be property that the City is willing to accept. The Petitioner is responsible for any costs associated with the conveyance including appraisals, title work, environmental site assessment, deeds or other document production, taxes on the transaction, or other expenses related to the conveyance of real property, including environmental remediation.
- D. Payment of Funds: in certain circumstances where it is not practicable to provide or develop public benefits such as those listed above, the City may accept the payment of in-lieu funds dedicated for a specific purpose consistent with these policies as a public benefit. Such payment must be determined to be an acceptable alternative by the City. Such payment to meet public benefit obligations does not substitute for the payment of the required street vacation fee.

Guideline 5.2 Vacation for Security Purposes

Street and other rights-of-way are dedicated for general public use and enjoyment. Vacations which solely result in the private regulation of access to public property shall not be granted unless the vacation provides a clearly identifiable public benefit. Vacations are not considered a solution to security problems and shall not normally be approved, absent extraordinary circumstances.

MISCELLANEOUS POLICIES

POLICY 6 CONDITIONS MUST BE ASSURED PRIOR TO THE PASSAGE OF THE FINAL STREET VACATION ORDINANCE

- A. The City Council has established a two-step process for its review and approval of vacation petitions. The first step is Conditional approval and the second step is Ordinance approval and the completion of the process by passage of the final ordinance vacating the street. This two-step process has been established to assure that no vacation is completed without meeting all of the conditions imposed by the City Council and without the payment of all required fees.

If the City Council grants a vacation, Conditional approval would follow the review and analysis prepared by SDOT and the public hearing process. The Council would grant the vacation subject to conditions to assure that the project is built as proposed, to mitigate any impacts, to assure the provision of the public benefit, and to assure the payment of required fees. Following this Conditional approval, the Petitioner may proceed with the development of the project and DPD may issue the MUP and other necessary permits. Prior to beginning work that would alter the street right-of-way, the Petitioner must address any utility and transportation impacts and may need to obtain permits.

- B. As the development proceeds and the Petitioner works on meeting the conditions, regular reports must be provided to SDOT. The Petitioner bears the responsibility for satisfying the conditions and all the costs associated with satisfying the conditions. The Petitioner must fulfil the conditions in a manner approved by the City. The conditions imposed on a vacation vary and the means to assure compliance will also vary as follows:

- Conditions related to the development: conditions related to the development of the project vary and may be imposed to address design or transportation issues, to mitigate impacts or it relate to the provision of the public benefit. These types of conditions are generally met by the completion of the development itself. As for example, a condition that a signal be installed, a plaza be provided or a set back be incorporated would be satisfied by the physical completion of the work. In certain circumstances the City would consider a performance bond or other method to assure the work is completed.

- Utility issues: following Conditional approval of the vacation, the Petitioner must work with the utilities to resolve any utility issues including those identified in the vacation conditions. All easements, restrictive covenants and relocation agreements must be executed prior to passage of the vacation ordinance. If acceptable to the utility, in some circumstances, a performance bond may be posted prior to final vacation approval.
- Transportation Conditions: any conditions imposed to assure the smooth and safe operation of streets and alleys, including construction of required improvements, must be carried out prior to the passage of the vacation ordinance.
- Conveyance of real property: if the conditions require the dedication or property, and exchange of property or the dedication of right-of-way, the Petitioner must convey the property prior to the passage of the vacation ordinance. The Petitioner must convey property acceptable to the City and provide an acceptable deed form, title insurance, Environmental Site Assessment or environmental remediation, and any other reviewed deemed necessary by the City, and pay any applicable taxes.
- Conditions that extend beyond the development phase of the project: for conditions that will last for the life of the project such as the requirement that a plaza remain undeveloped and accessible to the public, a Property Use and Development Agreement (PUDA), an easement or some other binding mechanism shall be completed and recorded as necessary, prior to the passage of the vacation ordinance.
- Payment of fees: all fees shall be paid prior to the passage of the vacation ordinance. Any conditions that require the payment of funds such as a contribution to a community project as an element of the public benefit or funding the completion of a trail shall be completed prior to the passage of the vacation ordinance.

- D. In unusual circumstances the City may consider accountability mechanisms such as performance bonds or escrow accounts where a complex series of transaction needs to occur or where unusual circumstances exist. In no circumstances will the City pass a final vacation ordinance without certainty about the completion of all required conditions and the payment of all required fees.

POLICY 7 CITY COUNCIL INITIATION OF STREET VACATION PETITIONS

- A. The City council may initiate street vacations by resolution, rather than by requiring a street vacation petition, only for a public purpose or

when extraordinary circumstances prevent the following of the petition process.

POLICY 8 PROCEDURAL INFORMATION

- A. The City Council requests SDOT to develop vacation review procedures consistent with these policies. SDOT will further develop petition information for the public that clearly explains the vacation petition process; the requirements of State law; the policy direction from the City Council; the costs; time frame and steps in the review process; the public hearing process and other opportunities for public input. SDOT shall provide this information to citizens and petitioners and should update it as necessary as steps or procedures are revised.